IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.1831 OF 2003

Rajendran .. Petitioner

-vs-

1. Malarkodi
2. Malathi
3. Anupriya .. Respondents

This Revision is filed against the order passed by Chief Judicial Magistrate, Perambalur in M.C.No. 4 /2003 dated 24.9.2003.

For petitioner : : Mr.AR.L.Sundaresan,
Senior Counsel
for Ms.AL.Gandhimathi

For respondents : : Mr.Suresh Babu
for Mr.L.P.Balaji Ram.

O R D E R

This revision has been preferred against the order passed in M.C.No.4 of 2003 on the file of Chief Judicial Magistrate, perambalur,dated 24.9.2003.

2. The respondent in M.C.No.4 of 2003 on the file of Chief Judicial Magistrate, Perambalur is the revision petitioner herein. The said application was filed under Section 125 Cr.P.C. by his wife Malarkodi and their daughters minor Malathi and minor Anupriya. In the said application, the petitioners have claimed Rs.500/- each towards maintenance from the revision petitiioner/respondent.

3. The short facts in the maintenance petition relevant for the purpose of deciding this revision are as follows:
The marriage between the first petitioner Malarkodi and the respondent Rajendran took place at Elampillai Chitrakoil, Salem District and in the wed lock petitioners 2 and 3 were born. Since the second petitioner is a female child, the respondent threatened the first petitioner to kill the child to which the first petitioner was not agreed to. Thereafter both the first petitioner and the respondent were living at Coimbatore as husband

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and wife. The third petitioner was also born at Coimbatore. The revision petitioner/respondent has demanded the first respondent/ first petitioner to bring more dowry from the house of the first respondent herein . The revision petitioner/respondent has further criminally intimidated the first respondent to put an end to the female child and also demanded dowry and insisted the first petitioner to bring 10 sovereign of gold jewels and T.V besides house hold utensils. Since the first petitioner has refused to bring more dowry , she began to live with her parents due to unbearable harassment received at the hands of the revision petitioner/respondent. The respondent began to live with another woman at Kerala. The respondent is working as a Jeep Driver in the Collectorate, Perambalur in Information and Publicity Department. The respondent is a well to do man. But the respondent has neglected to maintain the petitioners 1 to 3. The first petitioner /first respondent finds it very difficult to see both ends meet . She would not get sufficient income to provide wearing apparels, food and other expenses to her children. Hence the petition for maintenance at the rate of Rs.500/- to each of the petitioners.

4. The respondent in his counter would contend that there is no relationship of husband and wife between him and the first petitioner Malarkodi and that second and third petitioners were not born to the first petitioner and the respondent and there was no marriage solemnised between the first respondent and the revision petitioner as alleged in the petition at Elampillai Chitrakoil, Salem District. The respondent has filed O.S.No.327 of 2000 against the petitioners. Only to snatch a substantial amount from the respondent/revision petitioner, the petitioners/respondents have filed the petition for maintenance. The respondent at any point of time has demanded any dowry from the first petitioner or never threatened the second and third petitioners to put an end to their life. This respondent is working as a Jeep Driver and is earning only Rs.3,800/- per mensum. After the death of his first wife, Shanthi, the respondent has shifted his residence to Kerimedu at Salem and was residing in the house owned by Bala and Parameswari. The first petitioner is the sister of the said Parameswari. The first petitioner had developed intimacy with the brother of the said Balu viz., Sait and had left the house along with Sait . After Balu traced them, the first petitioner had informed that she became pregnant only through Sait and she will live only with Sait. Since this revision petitioner/rspondent was residing as a tenant in the house of the sister of the first petitioner, with an ulterior motive, the first petitioner has filed the frivolous maintenance application. The revision petitioner/respondent had married one Ramani while he was working at Coimbatore and through the said wed lock, he has been blessed with two sons viz., Kannan and Prasad and now the revision petitioner/respondent is living with them at Perambalur. The first petitioner is at present living with one person who belongs to Kalottar caste . After leaving Sait and through the said Kalottar caste person, the first petitioner has given birth to the third petitioner. At present, the first petitioner is living with the person belonging to

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Kolathoor caste along with second and third petitioners. Hence the application is liable to be dismissed.

5.During the trial, the first petitioner has examined herself as P.W.1 and also examined six other witnesses on her side and Exs P1 to P4 were exhibited . On the side of the respondent, the respondent has examined himself as D.W.1 besides examining another witness as D.W.2. No document was produced on the side of the respondent.

6. After going through the oral and documentary evidence available before the trial Court, the learned trial Judge has come to a conclusion that the respondent/revision petitiioner has lived with the first petitioner for a quite long time and the first petitioner had given birth to second and third petitioners through the respondent/revision petitiioners and hence under section 125 of Cr.P.C., the revision petitioner/respondent is liable to pay maintenance to the petitioners and accordingly fixed the alimony for the first petitioner as Rs.400/- per month and for second and third petitioners each Rs.300/- per month.Aggrieved by the findings of the trial Judge, the husband, revision petitioner/respondent in M.C.No.4 of 2003 has preferred this revision.

7. Now the point for determination in this revision is whether the quantum of maintenance awarded by the trial Court is liable to be set aside for the reason that there was no marriage took place between the first petitiioner and the respondent as alleged in the counter statement of the respondent?

8.The Point:
The trial Court has given a definite finding that the first petitioner has failed to prove the subsistence of marriage between the first petitioner and the respondent through any documentary evidence. The learned trial Judge has also pointed out in his Judgment that there are discrepancies in the evidence of P.W.2 ,P.W.3 and P.W.5 regarding the solemnisation of marriage between the first petitioner and the respondent. The findings of the learned trial Judge is that there is no documentary evidence to show that the marriage between the first petitioner and the respondent being conducted in Elampillai Chitrakoil, Salem District. But the fact remains that the revision petitioner/respondent and the first respondent/first petitiioner have lived together as husband and wife and that this fact has been proved by the letters written by the revision petitioner/respondent under Exs P1 to P4. It is the definite case of the first petitioner/first respondent/wife that while the respondent was residing as a tenant in the house of the first petitioner's sister at Coimbatore, they fell in love with each other and got married. The learned trial Judge relying on the recitals in Exs P1 to P4 to the effect that the respondent has addressed the first petitioner as his wife and also mentioned the second and third minor petitioners as his children and specifically mentioned in Ex P2 letter dated 13.11.1989 informing that his G.P.F., S.P.F, F.B.F and L.I.C. amount were all deposited only in the name

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of the first petitioner Malarkodi. Even though in his deposition as D.W.1, the revision petitioner/respondent would deny his signatures contained in Exs P1 to P4 are not that of his as pointed out by the learned trial Judge in his Judgment that he has not taken any steps to get expert opinion regarding the same by taking steps to send the letters Exs P1 to P4 for comparing the signatures found in Exs P1 to P4 to that of the admitted signatures of the revision petitioner/ respondent. Under such circumstances, as correctly held by the learned trial Judge, even though the marriage between the first petitioner and the respondent has not been proved, it has been proved that both the first petitioner and the respondent have lived together as husband and wife and minor second and third petitioners have been born to them and that the petitioners are entitled to maintenance as per the provisions of Section 125 Cr.P.C.

9.When we go to the quantum of maintenance, it cannot be said that the trial Court has fixed an exorbitant maintenance in favour of the petitioners. The learned trial Judge has fixed only Rs.400/- per mensum towards maintenance of the first petitioner and Rs.300/- each per mensum towards maintenance of the second and third petitioners as against the claim of Rs.500/- each towards maintenance. Admittedly, the revision petitioner/respondent is a Government Servant working as a Jeep Driver in the Information and Publicity Department earning more than Rs.3,800/-per month at the time of filing of the petition. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in M.C.No.4 of 2003 on the file of the Chief Judicial Magistrate, Perambalur. Point is answered accordingly.

10. In the result, the revision is dismissed with costs through out, confirming the Judgment in M.C.No.4 of 2003 on the file of the Court of Chief Judicial Magistrate, Perambalur. Costs Rs.2,000/- [Rupees Two thousand] only.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
The Chief Judicial Magistrate, Perambalur
+ 1 CC To Mr. AL.Gandhimathi, Advocate SR NO.20337
+ 1 CC To M/s.Subash Associates, Advocate SR NO.20253

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